

## **II. Remarks**

### **A. Status of the Claims**

Claims 1-18 will be pending after entry of this amendment. Claims 1, 4, 5, 9, 11, 13 and 17 have been amended without prejudice. Support for the amendments can be found throughout the application as originally filed, specifically, e.g., in Figure 1. Applicants submit that no new matter has been added by virtue of this amendment.

Applicants note that claims 17 and 18 were inadvertently left out of the Listing of Claims in Applicants' September 29, 2008 Response and were not intended to be cancelled. Accordingly, Applicants have included claims 17 and 18 in the current Listing of Claims and respectfully request that claims 17 and 18, as currently presented, be considered by the Examiner.

### **B. Claim Rejections Under 35 U.S.C. § 112**

#### **1. § 112, first paragraph**

In the Office Action, claim 1 was rejected under 35 U.S.C. § 112, first paragraph, as being of undue breadth. Specifically, the Examiner stated that claim 1 is "interpreted as a single means claim" because the claim is "broadly interpreted as one processor configured to perform the functions mentioned in the body of the claim."

In response, claim 1 has been amended without prejudice to recite that the system comprises (i) a client station; (ii) at least one database; (iii) a spread engine; and (iv) an order execution server. Applicants submit that, as amended, claim 1 is not a single means claim.

Accordingly, Applicants request that the rejection of claim 1 under 35 U.S.C. § 112, first paragraph be removed.

**2. § 112, second paragraph**

In the Office Action, claims 1-16 were rejected under 35 U.S.C. § 112, second paragraph. Specifically, the Examiner alleged that claims 1, 9 and 13 recite a system, but “the body of the claim does not contain any limitations indicating the structure of the device”, and in claim 5, “it is unclear how the method is performed.”

In response, claims 1, 9 and 13 have been amended to recite structural limitations of the claims, i.e., a client station, a spread engine and a server. Claim 5 has been amended to show that the method recited therein is performed via the spread engine and the order execution server, and displayed on the client station. Applicants also note that the “means plus function” language previously presented in claim 9 has been removed.

Additionally, the Examiner alleged that “it is unclear whether the recited ‘server’ is embodied as software or hardware in the specification”. In response, Applicants point out that a skilled artisan would recognize, in light of the teachings of the present specification, that the “server” can be either hardware or software, as both forms can be utilized in the present invention, and the claims do not have to be limited to recite that it is either one or the other. For example, paragraph [0024] of the specification describes an embodiment in which the spread engine may reside “on the order execution server or a separate computer coupled to the client station and order execution server.” In such an embodiment, the server is hardware, as it is analogous to a computer in this instance. In other embodiments, such as those described in paragraph [0040] of the specification, where the gateway is “a software application running on the order execution server”, the server may be hardware or software, as the software application can run on either. Therefore, Applicants submit that the server may exist as either hardware or software, and will perform the recited steps regardless of the form.

The Examiner also stated, with respect to claim 5, that “it is unclear what is meant by initiating an order”, and further that “[i]t is unclear whether a fully functional method can be achieved if the orders of the securities are simply initiated and not placed or completed.” In response, Applicants respectfully submit that a skilled artisan would recognize that the term “initiating”, as used in the present specification, has its plain meaning, i.e., to begin. For example, Figure 1 of the specification shows that the order execution server initiates an order to the markets, and then the markets send back an order confirmation or rejection, at which time the order is either completed or not. Applicants submit that the order does not have to be completed for it to be a fully functional method; the claimed method is achieved when an order is initiated.

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 112, second paragraph be removed.

### **C. Claim Rejections Under 35 U.S.C. § 101**

In the Office Action, claims 1-16 were rejected under 35 U.S.C. § 101 for allegedly being directed to non-statutory subject matter.

In response, the claims have been amended to recite that the system and methods involve statutory subject matter, i.e., a “client station”.

Accordingly, Applicants request that the rejection under 35 U.S.C. § 101 be removed.

### **D. Claim Rejections Under 35 U.S.C. § 103(a)**

#### **1. Burns et al., Potter et al., Gerhard and Glodjo et al.**

In the Office Action, claims 1, 3-5, 7-9, 11-13 and 15-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,243,083 to Burns et al. in view of U.S.

Patent No. 5,787,402 to Potter et al. and U.S. Patent No. 6,852,683 to Gerhard in further view of U.S. Publication No. 2002/0091624 to Glodjo et al.

This rejection is respectfully traversed. Applicants submit that the combined teachings of Burns et al., Potter et al., Gerhard and Glodjo et al. fail to render obvious the systems and methods for initiating trading of a spread of two or more securities in two or more markets, as presently claimed. The Examiner is reminded that pursuant to MPEP, 8<sup>th</sup> Ed., 7<sup>th</sup> Rev. § 2142, to establish a prima facie case of obviousness, and thus sustain the rejection of a claim under 35 U.S.C. § 103(a), there must be a clear articulation of the reasons why Applicants' claimed invention would have been obvious. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007). The Supreme Court in KSR has further noted that an analysis supporting a rejection under 35 U.S.C. § 103(a) should be made explicit. Therefore, it is clear that an obviousness rejection "cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006). Moreover, "[t]o support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." MPEP, 8<sup>th</sup> Ed. 7<sup>th</sup> Rev. § 706.02(j).

Specifically, Applicants submit that the combination of cited references fail to render obvious the limitation of initiating two orders in two different markets. As acknowledged by the Examiner, Burns et al. do not disclose the limitation of initiating a first order in a first market for a first security of the spread in a foreign currency and

initiating a second order in a second market for a second security. See Office Action at page 6. The Examiner relies on Glodjo et al. solely for allegedly teaching this limitation, specifically at paragraphs [0048]-[0049], [0053], [0059], and [0066]-[0070]. Applicants point out that in paragraphs [0048]-[0049], Glodjo et al. describe the “spot FX” market, as well as other over-the-counter commodities and financial instruments contemplated for use in the Glodjo et al. invention. However, Applicants submit that the mere mention of commodities and financial instruments other than spot FX would not lead a skilled artisan to the claimed system or method of initiating at least two trades in two different markets. Paragraph [0053] of Glodjo et al. describes how the Glodjo et al. invention enables “two-way” orders from any agent. Applicants respectfully point out that the phrase “two-way orders” does not imply initiating at least two trades in two different markets, but rather means an order in which involves “both bid and ask”. See Glodjo et al. at paragraph [0056]. Paragraphs [0055] and [0059] of Glodjo et al. describe the trading of two instruments, i.e., instrument “L” and instrument “Q”. Again, Applicants submit that the trading of two different instruments is not the equivalent, nor is it suggestive, of initiating two trades in two different markets. Lastly, the Examiner cites to paragraphs [0066]-[0070] of Glodjo et al., which describe trading spot FX in different currencies. Applicants submit that trading “spot FX” between “the U.S. Dollar (USD), Euro (EUR) and Japanese Yen (JPY)” is not indicative or suggestive of initiating two trades in two different markets, as presently claimed.

Applicants further point out that Potter et al. and Gerhard also do not describe initiating two trades in two different markets, and therefore fail to cure the deficiencies of Burns et al. and Glodjo et al.

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) be removed.

**2. Burns et al., Potter et al. and Raykhman**

In the Office Action, claims 2, 6, 10 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Burns et al. in view of Potter et al. and further in view of U.S. Patent No. 7,171,386 to Raykhman.

This rejection is respectfully traversed. Applicants submit that the combined teachings of Burns et al., Potter et al. and Raykhman fail to render obvious the systems and methods for initiating trading of a spread of two or more securities in two or more markets, as presently claimed.

For the reasons discussed *supra*, Applicants submit that Burns et al. and Potter et al. specifically do not disclose the limitation of initiating a first order in a first market for a first security of the spread in a foreign currency and initiating a second order in a second market for a second security. Applicants further submit that Raykhman also do not disclose the limitation of initiating a first order in a first market for a first security of the spread in a foreign currency and initiating a second order in a second market for a second security, and therefore fails to cure the deficiencies of Burns et al. and Potter et al.

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) be removed.

### **III. Conclusion**

In view of the amendments made and arguments presented, it is believed that all claims are in condition for allowance. If the Examiner believes that issues may be resolved by a telephone interview, the Examiner is invited to telephone the undersigned at (973)597-6162. The undersigned also may be contacted via e-mail at [epietrowski@lowenstein.com](mailto:epietrowski@lowenstein.com). All correspondence should be directed to our address listed below.

### **AUTHORIZATION**

The Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment, to Deposit Account No. 50-1358.

Respectfully submitted,  
Lowenstein Sandler PC

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